

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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5 PLUS 7 Inc. and CHRISTOPHER CARDILLO :
a/k/a CS CARDILLO, :
:

Plaintiffs, :
:

- against - :
:

BRITISH BROADCASTING CORPORATION, :
BBC WORLDWIDE PRODUCTIONS, BBC :
WORLDWIDE AMERICAS, INC., NBC :
UNIVERSAL, INC., PATRICK YOUNGE, :
TRAVEL MEDIA INC. d/b/a THE TRAVEL :
CHANNEL and/or d/b/a :
TRAVELCHANNEL.COM and COX :
COMMUNICATIONS INC., :
:

Defendants. :
-----X

Case No. 09-CV-2255 (DLI)

Electronically Filed

AFFIDAVIT OF ELISA MILLER

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ELISA L. MILLER, being duly sworn, hereby deposes and says:

1. I am a member of the bar of this Court and an associate at the firm of Davis Wright Tremaine LLP, counsel for defendants British Broadcasting Corp.; BBC Worldwide Productions LLC, incorrectly sued herein as BBC Worldwide Productions; BBC Worldwide Americas, Inc., and NBC Universal, Inc. (collectively, the “BBC/NBCU Defendants”) in the above-captioned action.

2. I submit this affidavit in connection with the motion of the BBC/NBCU defendants’ to dismiss, filed on July 22, 2009 and specifically with regard to the service of plaintiffs’ papers in opposition thereto.

3. On August 5, 2009, the parties executed a Stipulation providing that

plaintiffs' time to serve opposition papers in response to that motion was extended to and including September 8, 2009; and the time for the BBC/NBCU defendants to serve reply papers was extended to and including September 22, 2009. On August 14, 2009, plaintiffs filed that Stipulation (Docket No. 32).

4. On the appointed day, September 8, we did not receive service of plaintiffs' opposition papers, either by ECF, mail, or by any other means of delivery.

5. The following afternoon, September 9, I called plaintiffs' counsel, the Cardillo Law Firm, to inquire about their opposition papers, now one day late. I reached Christopher Cardillo, himself one of the plaintiffs (and counsel), who identified himself by name. I reminded him of the deadline for plaintiffs' opposition; he expressed surprise, and stated that although they were "working on" the opposition, he had believed that it was not due until September 14. After I referred him to the Stipulation, he stated that he must have put the due date into his calendar incorrectly. I said we would likely agree to a short extension if he needed it (although stating that I could not speak on behalf of our co-defendants). He thanked me for alerting him to this error, and said that he would speak with his brother Harry, who was taking responsibility for drafting the opposition papers, to determine what additional time would be necessary, and that either he or Harry would get back to me.

6. I did not hear back from either Christopher or Harry on the subject.

7. On Sunday, September 13, 2009, the opposing affidavit of Christopher Cardillo was filed via ECF (Docket No. 33). That affidavit is dated September 8, 2009 – the original due date – and purports to have been notarized by Alla Beyn (on information and belief a paralegal at Cardillo Law) on that same date. The Certificate of Service

accompanying the affidavit, signed by James Toressi, is also dated (and notarized by Alla Beyn) September 8, and purports to "certify that on September 8, 2009 true and correct copies of the foregoing Affidavit in Opposition of Christopher Cardillo were served via regular USPS mail".

8. On Monday, September 14, 2009, we received a service copy of the affidavit by mail, postmarked September 11 at 3pm. A photocopy of the envelope is attached hereto as Exhibit A.

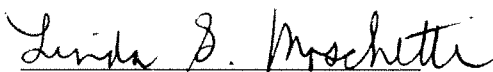
9. On September 15 and 16, 2009, I spoke with Savalle Sims of Arent Fox, counsel for co-defendants Travel Channel, Cox Communications, and Patrick Young. She advised that Arent Fox's New York office had also received a service copy of the affidavit on September 14, 2009 (she indicated that it was unclear whether the delivery was made by mail or by hand); and its Washington, D.C. office by mail on September 15, 2009, postmarked September 11 at 3pm.

10. On information and belief, Christopher Cardillo could not have signed the affidavit, nor could it have been notarized or service been effected on September 8, the day prior to my conversation with Mr. Cardillo.



ELISA L. MILLER (EM 1174)

Sworn to before me this
21st day of September, 2009

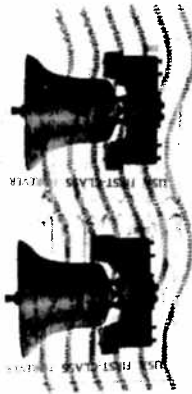


Notary Public
LINDA G. MOSCHETTI
Notary Public, State of New York
No. 01MO4723235
Qualified in Bronx County
Term Expires August 31, 2010

EXHIBIT A

GARDILLO LAW, P.C.
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Brooklyn, NY 11223

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DAVIS WRIGHT TREMAINE LLP
Date 9/14/09
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